

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CENTER DOZING COMPANY,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 582

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being an appeal of Center Dozing Company to a notice of civil penalty of \$100.00 for allegedly not having taken reasonable precautions to prevent airborne dust; having come on regularly for hearing before the Pollution Control Hearings Board on the 23rd day of August, 1974, at Seattle, Washington; and appellant, Center Dozing Company, appearing through its employees, Terry Holmes and Leroy D. Holmes and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board member present at the hearing being W. A. Gissberg and the Board having reviewed the

1 transcript of the testimony, exhibits, records and files herein and
2 having entered on the 1st day of October, 1974, its proposed Findings
3 of Fact, Conclusions of Law and Order, and the Board having served
4 said proposed Findings, Conclusions and Order upon all parties herein
5 by certified mail, return receipt requested and twenty days having
6 elapsed from said service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order; and the Board being fully advised in the premises;
9 now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 1st day of
12 October, 1974, and incorporated by this reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 29th day of October, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17 Walt Woodward
18 WALT WOODWARD, Chairman

19 W. A. Gissberg
20 W. A. GISSBERG, Member

21 Chris Smith
22 CHRIS SMITH, Member

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Appellant,)
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v.)
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PUGET SOUND AIR POLLUTION)
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Respondent.)

PCHB No. 582

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

A formal hearing on the appeal of Center Dozing Company to a notice of civil penalty of \$100.00 for allegedly not having taken reasonable precautions to prevent airborne dust, came on before Board member W. A. Gissberg on August 23, 1974 in Seattle, Washington.

Appellant appeared by and through its employees, Terry Holmes and Leroy D. Holmes; respondent appeared by and through its attorney, Keith D. McGoffin.

Having reviewed the transcript of the testimony and the exhibits and being fully advised, the Board makes the following

EXHIBIT A

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd Ex. Sess., has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

Section 9.15 of respondent's Regulation I makes it unlawful to cause or permit a building or its appurtenances to be demolished without taking "reasonable precautions" to prevent particulant matter from becoming airborne. Section 1.07(w) defines particulant matter as any material, except water, in an uncombined form that is airborne and exists as a liquid or a solid.

III.

On April 2, 1974 appellant commenced the work of demolishing a multi-floored building at 1142 Commerce Street, Tacoma, Washington. In order to prevent the dust created by such an activity, appellant had previously secured the permission of the City of Tacoma to use water from its hydrant for "watering" the structure. The use of water is a normal method used as a precaution against dust during the demolition of buildings.

IV.

All went well with the watering and demolition of the structure until the evening of April 3, 1974 at which time water from the hydrant source became unavailable because of a broken hydrant hose connection. Appellant, having knowledge that water was not available to it, nonetheless continued wrecking the building on the morning of April 4,

1 1974. About 10:45 a.m. respondent's inspector answering a citizen's
2 complaint, observed dust spread from the scene of the work to the adjacent
3 buildings and the public street, as a result of which he caused Notice of
4 Violation No. 9629 to be issued and personally served upon appellant's
5 agent, followed by Notice of Civil Penalty No. 1510, served upon appellant
6 by registered mail.

7 V.

8 About 11:45 a.m., appellant obtained a new valve and immediately
9 installed it, thus making its dust watering device operable.
10 Notwithstanding its use of water and the commencement of rainfall, the
11 dust continued to rise from the scene of the demolition work to such an
12 extent that vehicles using the adjacent street were required to turn on
13 their headlights.

14 VI.

15 Appellant was paying \$650.00 per day for the rental of an 80 foot
16 crane and "clam shell" being used by it in the demolition of the building.
17 Appellant was generally aware of respondent's dust regulations and had
18 received a warning from respondent at a time and place not connected with
19 the subject appeal.

20 VII.

21 Any Conclusion of Law hereinafter recited which should be deemed a
22 Finding of Fact is hereby adopted as such.

23 From these Findings, the Pollution Control Hearings Board comes
24 to these

25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I.

Appellant, having permitted the demolition of the building to be continued notwithstanding the fact that the use by it of its watering device could not be utilized, violated respondent's Regulation I.

II.

Respondent has the legal authority to impose a civil penalty in the maximum amount of \$250.00. Under the circumstances, the imposition of a \$100.00 penalty is reasonable.

III.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Accordingly, it is the Board's

ORDER

The imposition of the civil penalty in the amount of \$100.00 is affirmed.

DONE at Lacey, Washington this 1st day of October, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

W. A. Gissberg
W. A. GISSBERG, Member

Chris Smith
CHRIS SMITH, Member